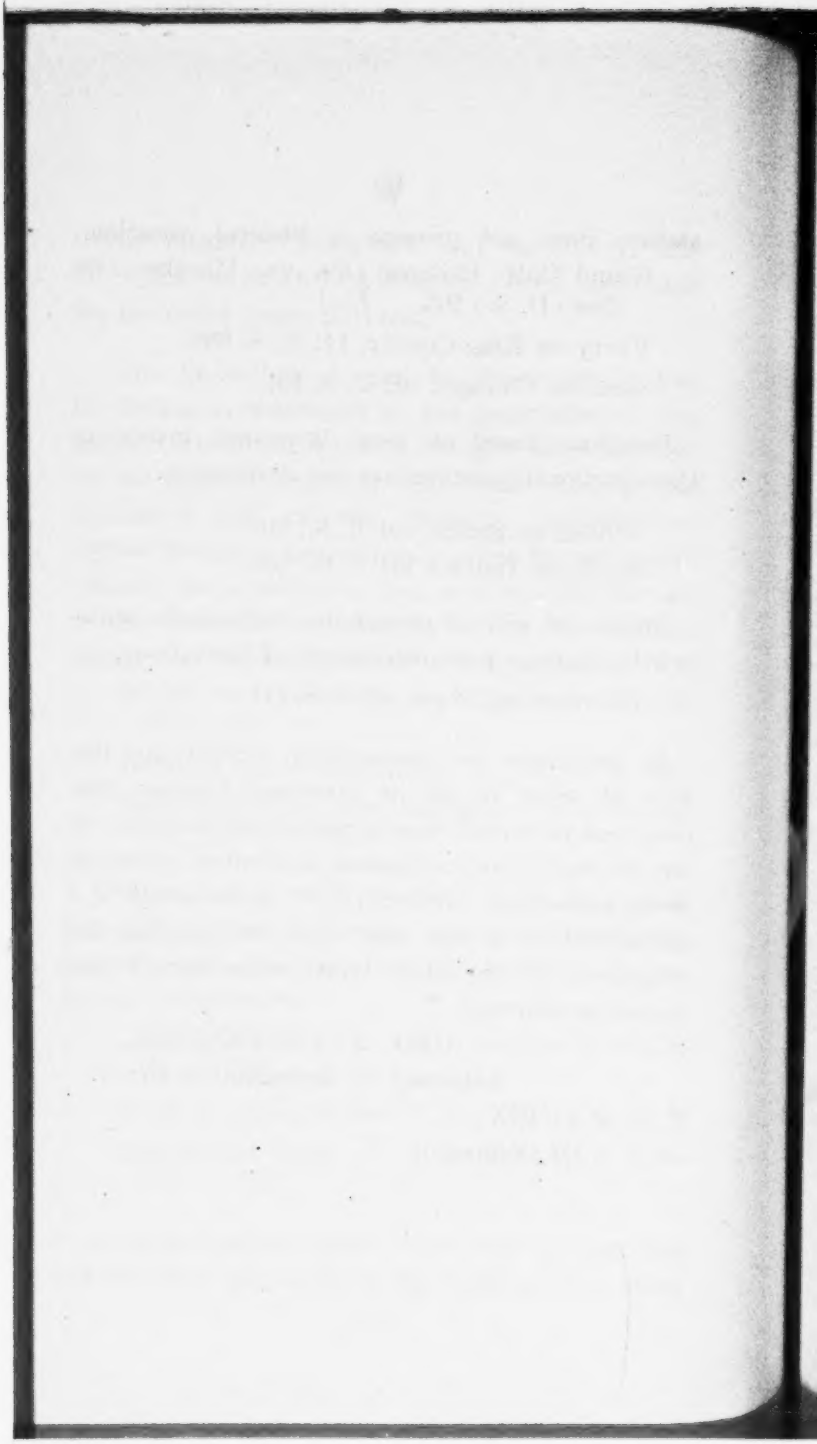

Supreme Court of the United States.

No. 125.—October Term, 1905.

George C. Rankin, Receiver of the Hutchinson National Bank, Plaintiff in Error, vs. Edward E. Barton. } In error to the Supreme Court of the State of Kansas.

[November 13, 1905.]

Mr. Justice McKenna delivered the opinion of the Court.

The question in this case is the application of the statute of limitations of a State to the liability of a stockholder of a national bank before the amount of such liability has been ascertained and assessed by the Comptroller of the Currency. The trial court held the statute applicable, and its judgment was affirmed by the Supreme Court of the State.

The petition was filed November 13, 1902, and averred that the Hutchinson National Bank became insolvent in 1893, and defendant in error was appointed its receiver. On July 19, 1894, the Comptroller of the Currency ordered an assessment of $75,000 upon the individual liability of the stockholders, being $75 on each share, to pay the debts of the bank. After application of the amounts collected, and after further accounting, it was found necessary to make another assessment, and on November 20, 1900, the Comptroller of the Currency made another assessment of $19,000, being $19 upon each share. It was averred "that said assessment was made just as soon as discovered in the exercise of diligence to be necessary, and just as soon as it was ascertained that the first assessment and assets of the bank were insufficient." The amount due from defendant in error was $627, for which judgment was prayed. A demurrer was sustained to the petition on the ground that it showed on its face that the cause of the action was barred by the statute of limitations of the State. In sustaining this ruling the Supreme Court of the State said: (1) That although the cause of action arose under the act of Congress, which prescribed no limitation on the remedy against stockholders, the statute of the State applied; and (2) the statute commenced to run not when the assessment was made against a stockholder, but was put in motion by delay in making the assessment. Prior decisions of the Supreme Court of the State were relied on for this conclusion. They established the local law to be, it was said, that when an act to be done is wholly within the control of the party suing, he must perform it within a reasonable time, and such time cannot

extend the period within which the action would be barred, if no such preliminary step were necessary. And it was decided that the averment of the petition, that the second assessment was made as soon as it was discovered to be necessary, was a mere conclusion of the pleader, which was countervailed by the facts alleged.

We think the court overlooked the official character and power of the Comptroller of the Currency, and the decisions of this court declaring them. A national bank is an instrumentality of the United States, its circulating notes are guaranteed by the United States, and if the United States should be compelled to pay them the United States has a paramount lien on the assets of the bank for reimbursement. The administration of the bank's assets is, therefore, vested in the Comptroller of the Currency as an officer of the United States. He appoints the receiver and directs his acts. The individual liability of a stockholder can only be enforced by his order. The provision is as much for the benefit of the stockholders as for the United States, and it is indispensable to the bringing of a suit against the stockholder. In other words, the liability dates from the order of the Comptroller. It was said in *Kennedy* v. *Gibson*, (8 Wall. 498, 505): "It is for the Comptroller to decide when it is necessary to institute proceedings against the stockholders to enforce their personal liability, and whether the whole or a part, and if only a part, how much, shall be collected. These questions are referred to his judgment and discretion, and his determination is conclusive. The stockholders cannot controvert it. It is not to be questioned in the litigation that may ensue. He may make it at such times as he may deem proper and upon such data as shall be satisfactory to him. This action on his part indispensable, whenever the personal liability of the stockholders is sought to be enforced, and must precede the institution of suit by the receiver. The fact must be distinctly averred in all such cases, and if put in issue must be proved." Subsequent cases have reiterated the doctrine. (*McDonald* v. *Thompson*, 184 U. S. 71; *Studebaker* v. *Perry*, Id. 258.) As the power of the Comptroller is derived from a statute of the United States, it cannot be controlled or limited by State statutes.

A motion is made by defendant in error to dismiss the writ of error for want of jurisdiction in this court. It is manifest from what we have said that the motion is without foundation.

Judgment reversed and cause remanded for further proceedings not inconsistent with this opinion.